

FILED
02-15-2019
Clerk of Circuit Court
Racine County
2018CV001453

STATE OF WISCONSIN

CIRCUIT COURT

RACINE COUNTY

RODNEY ARTHUR and
CATHERINE MARIE JENSEN,

Plaintiffs,

v.

Case No.: 18-CV-1453

Case Code: 30402

VILLAGE OF MOUNT PLEASANT,

Defendant.

AFFIDAVIT OF BRETT WALLACE

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Brett Wallace, being duly sworn upon oath, deposes and states as follows:

1. I have been employed by the Wisconsin Department of Transportation ("DOT") since 1991 and am currently employed by DOT as its "Foxconn Project Director."

2. In 2010, DOT placed of record the Transportation Project Plat ("2010 Plat") for Project No. 1030-24-20 ("2010 Project") for the IH 94/STH 11 Interchange, which included the I-94 East Frontage Road and the Jensen Parcel. A true and correct copy of the relevant portion of the 2010 Plat and its amendments are attached hereto as Exhibit A.

3. The 2010 Plat called for the acquisition of all direct access rights from the frontage of the Jensen Parcel to the I-94 East Frontage Road upon which it abuts.

4. The 2010 Plat indicates that following acquisition, the Jensen Parcel retained access only via an easement from the neighboring property to the south, the Petersen parcel.

5. The first three pages of Exhibit C to the Affidavit of J.C. Johnson are from Project No. 1030-24-70, which relates to the construction of the 2010 Project that was constructed in 2018.

6. DOT entered into an Agreement with the Village of Mount Pleasant dated February 5, 2018 ("Agreement") which obligated Mount Pleasant to acquire certain lands and interests DOT determined were necessary for the future improvement of I 94. A true and correct copy of the Agreement is attached hereto as Exhibit B.

7. The project which is the subject of this lawsuit is a 2018 DOT project, Project No. 1320-25-00 ("2018 Project"). A true and correct copy of the Plat for the 2018 Project ("2018 Plat") is attached hereto as Exhibit C.

8. The 2018 Plat identifies the lands and interests DOT has determined must be acquired by Mount Pleasant pursuant to the Agreement.

9. The 2018 Plat was designed to effectuate a "protective purchase" approach whereby no property in the 2018 Plat abutting the I 94 East Frontage Road would have any access to the East Frontage Road.

10. The 2018 Plat specifically lists in the Schedule of Lands and Interests Required that 0.133 acres in "fee" and "AR" are being acquired from the Jensen Parcel. (Ex. C. sheet 4.02). The symbols legend on the front of the 2018 Plat states "AR" is the "conventional abbreviation" for "Access Rights." (Ex. C sheet 4.01).

11. The 2018 Plat specifically shows "diamond" shaped markings across the entire frontage of the Jensen Parcel. (Ex. C. sheet 4.07). The symbols legend on the front of the 2018

Plat states these symbols mean “Access restricted by previous project or control.” (Ex. C sheet 4.01). The 2018 Plat has an arrow to these diamond symbols which states “Previous access from 1030-24-20.” (Ex. C. sheet 4.07). This indicates the Jensen Parcel had its access taken by the “previous” 2010 Plat. The 2018 Plat also states “access for parcel 213 [Jensen Parcel] via non descript ingress egress easement doc 1529467.” (Ex. C. sheet 4.07). This references the easement on the Petersen parcel for the benefit of the Jensen Parcel.

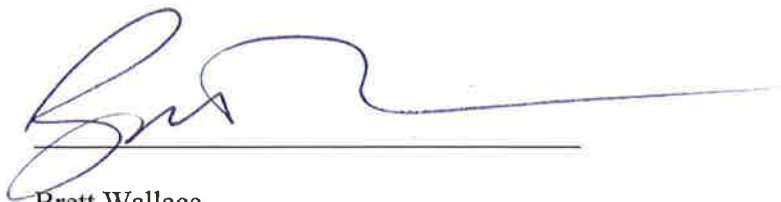
12. The 2018 Plat specifically lists in the Schedule of Lands and Interests Required that 0.525 acres in “fee” and “AR” are being acquired from the Petersen parcel. (Ex. C. sheet 4.02). The symbols legend on the front of the 2018 Plat states “AR” is the “conventional abbreviation” for “Access Rights.” (Ex. C sheet 4.01).

13. The 2018 Plat shows “whisker” markings across the entire frontage of the Petersen parcel. (Ex. C sheet 4.07). The symbols legend on the 2018 Plat states these symbols mean “Access restricted by acquisition.” (Ex C. sheet 4.01). This means that upon acquisition, the Petersen parcel will have no remaining access as a result of the 2018 Project. The 2018 Plat states that Petersen parcel is “landlocked.” (Ex. C sheet 4.07).

14. After acquisition by Mount Pleasant of what is described in the 2018 Plat, neither the Petersen parcel nor the Jensen Parcel had any access to the I 94 East Frontage Road.

15. With no access via the Petersen parcel, the Jensen Parcel has no access to the I 94 East Frontage Road.

16. DOT has not yet physically closed the driveway on the Petersen parcel, but plans to do so.



Brett Wallace

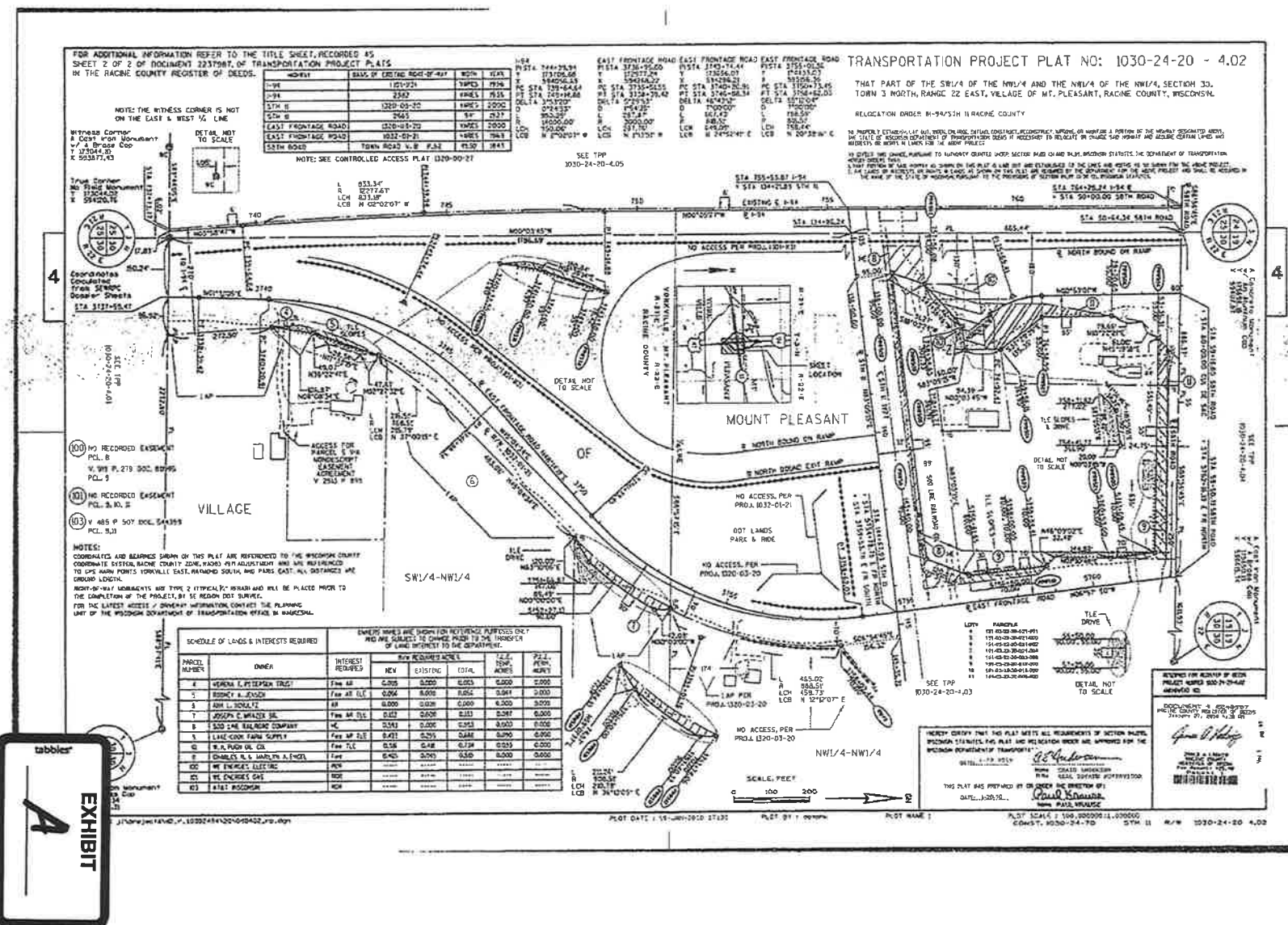
Subscribed and sworn to before me
this 15 day of February, 2019.



Notary Public, State of Wisconsin

My Commission 8/16/2021

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AGREEMENT**by****THE VILLAGE OF MOUNT PLEASANT, WISCONSIN****and****THE WISCONSIN DEPARTMENT OF TRANSPORTATION.****February 5, 2018**

This Agreement contains the agreements of the Village of Mount Pleasant ("Village") and the Wisconsin Department of Transportation ("DOT"), collectively the parties ("Parties").

WHEREAS the Village and DOT anticipate increased demands upon existing highways in the area as a result of increased development in the Village that will necessitate improvement of such highways;

WHEREAS such increased demands require an extraordinarily high level of synchronization and cooperation by the Parties, in order to complete all projects described herein in a timely manner;

WHEREAS DOT believes the nature of the anticipated highways improvements are a matter of statewide transportation concern; and The Parties agree to the following:

A. VILLAGE RESPONSIBILITIES:**The Village shall:**

1. Cooperate with DOT regarding scheduling and sequencing plans for all DOT responsibilities in sub. B, as needed to complete such actions.
2. Cooperate and coordinate scheduling with DOT to accomplish utility relocations and installations, as needed to complete such actions. DOT shall pay for all utility relocations that are compensable by DOT pursuant to DOT's Utility Coordination Guide.
3. Acquire, with Village funds, by August 1, 2018, or as soon as possible thereafter, all property and property rights, including all litigation costs required to permit DOT's initiation of all responsibilities described in sub. B.
4. Assist DOT with public information activities regarding all DOT responsibilities, as described herein. The scope of such assistance may be further defined in additional state-municipal agreements implementing DOT Responsibilities.



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5. Assume sole responsibility and all costs for planning, designing and constructing any Village-requested betterments, including without limitation any decorative upgrades, enhancements, continuous street lighting, and/or multi-use paths desired by the Village within the rights-of-way of WIS 11 and Wisconn Valley Way. The Parties shall enter into a separate maintenance agreement prior to the installation of any Village-requested betterment. Village-requested betterments shall be incorporated into DOT construction plans upon timely submittal by the Village to DOT of plans, specifications, and estimates, and a maintenance agreement is executed by the Parties.

B. DOT RESPONSIBILITIES:

DOT shall:

1. Fund, develop and implement all necessary roadway improvements to meet development requirements for the improvement and expansion of STH 11 (between IH 94 East Frontage Road and CTH H) in the Village, by January 1, 2021, following relevant state and federal rules, in accordance with exhibits, either annexed hereto or added subsequently by mutual agreement, all of which are incorporated by reference.

2. Identify necessary right-of-way along the IH 94 East Frontage Road to preserve land for future improvements necessary to provide adequate long-term safety, mobility and access along IH 94.

3. Fund, develop and implement all necessary roadway improvements to meet development requirements for the construction of Wisconn Valley Way in the Village, by January 1, 2021, following relevant state and federal rules, in accordance with exhibits, either annexed hereto or added subsequently by mutual agreement, all of which are incorporated by reference.


4. Cooperate with Village regarding scheduling and sequencing plans for the responsibilities of all Parties, as described herein.

ADDITIONAL PROVISIONS:

1. In the event of default by any parties, the non-defaulting parties shall have all rights permitted by Wisconsin law.

Date: February 5, 2018

**VILLAGE OF MOUNT PLEASANT,
WISCONSIN**


David DeGroot, Village President

Date: February 15, 2018

**WISCONSIN DEPARTMENT OF
TRANSPORTATION**


Joe Nestler, DTSD Administrator

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